

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 687 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BHAGUBHAI B PATEL

Versus

DY.DIST. DEVEP. OFFICER

Appearance:

MR RR VAKIL for Petitioner
M/S PURNANAND & CO for Respondent No. 1, 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 08/09/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner, a former Talati-cum-Mantri, challenges the order dated 7th November, 1985, of the Deputy District Development Officer removing the

petitioner from service, which is confirmed by the District Development Officer in Appeal on 12th March, 1986, and has been further confirmed by the Gujarat Civil Services Tribunal on 3rd July, 1986, in Appeal No. 304/86. The Review Application No. 15/86 preferred by the petitioner has been dismissed on 9th January, 1987.

Somewhere in the year 1972, the petitioner was appointed in Valsad District Panchayat as Talati-cum-Mantri. Upon audit of accounts for the year 1977-78 and the year 1978-79, the petitioner was found to have misappropriated a sum of Rs. 294-47 PS. Upon receipt of the audit report, a sum of Rs. 105-89 PS was deposited by the petitioner on 5th May, 1978, and a sum of Rs. 189-08 PS was deposited by the petitioner on 17th December, 1979. The petitioner was thus alleged to have temporarily misappropriated Government funds. A disciplinary action was initiated against the petitioner on 29th September, 1980, however, was not proceeded further and a criminal complaint was lodged against the petitioner. The petitioner was tried in Criminal Case No. 489/83 by the learned Chief Judicial Magistrate, First Class, Gandevi. Pending the trial, on 28th September, 1983, the petitioner submitted a purshis and admitted his guilt. He stated that in the month of May 1977, his son had suffered severe Jaundice and he was compelled to usurp the Government money for the medical treatment of his son. In view of the said purshis, by the judgment and order dated 24th April, 1984, the petitioner was convicted of the offence punishable under section 409 IPC and was sentenced to suffer three months' RI and a fine of Rs.500/-, in default of payment of fine, he was sentenced to suffer further imprisonment for 15 days. However, the sentence was suspended and the petitioner was released on probation of good conduct in the sum of Rs.1000/- for a period of 12 months. Pursuant to the said conviction, on 17th June, 1985, notice was issued by the appointing authority calling upon the petitioner to show cause why he should not be removed from service. The notice was duly answered by the petitioner on 12th September, 1985. Having received the reply submitted by the petitioner, by the impugned order dated 7th November, 1985, the petitioner was ordered to be removed from service which was confirmed in Appeal by the District Development Officer and the Gujarat Civil Services Tribunal as aforesaid. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Vakil has submitted that section 12 of the Probation of Offenders Act, 1956, provides that in case of a person found guilty of an offence and released on

probation under the said Act, shall not incur disqualification. In that view of the matter, the petitioner also shall not incur disqualification of removal from service as a disciplinary measure. The contention is recorded with a view to rejecting the same. The question has been considered by the Hon'ble Supreme Court in several of its judgments. In the matter of SHANKAR DASS VS UNION OF INDIA & ANR (AIR 1985, SC 772), the Hon'ble Supreme Court has discussed the scope and ambit of the words 'shall not suffer disqualification' occurring in section 12 of the said Act. The court has held that - " The order of dismissal from service consequent upon a conviction is not a 'disqualification' within the meaning of section 12. There are statutes which provide that persons who are convicted for certain offences shall incur certain disqualifications. For example, Chapter-III of the Representation of the People Act, 1951, entitled 'Disqualifications for membership of Parliament and State Legislatures' and Chapter-IV entitled 'Disqualifications for voting' contain provisions which disqualify persons convicted of certain charges from being members of legislature or from voting at elections to legislatures. That is the sense in which the word 'disqualification' is used in section 12 of the Probation of Offenders Act ". Similar is the view expressed by the Hon'ble Supreme Court in the matter of UNION OF INDIA & ORS VS BAKSHI RAM (AIR 1990, SC 987) relied upon by Mr. Vakil. Mr. Vakil has however insisted that in the said case, regular departmental inquiry was held against the delinquent which has not been done in the present case and the order of punishment made without holding due departmental inquiry, is vitiated. I find no substance in this contention either. Nothing in the said judgment suggests that a fullfledged departmental inquiry was held against the delinquent or that such enquiry should be held inspite of the conviction recorded by the criminal court. Besides, the argument runs contrary to the provisions made in clause (a) of the proviso to Article 311 (2) and Rule 10 (1) (i) of the Gujarat Panchayats Service (Discipline & Appeal) Rules, 1964, which governed the service conditions of the petitioner. Mr. Vakil has also relied upon the judgment of the Hon'ble Supreme Court in the matter of AITHA CHANDER RAO VS STATE OF ANDHRA PRADESH (1981 SCC (CRI) 637), wherein though the appellant was found guilty under section 304 (a) IPC and was convicted and sentenced to imprisonment, was ordered to be released on probation on executing bond for good behaviour. While ordering the release of the appellant on probation, the learned Judges observed that - " As the appellant has been released on probation, this may not affect his service career in view

of section 12 of the Probation of Offenders Act ". Be it noted that what is reproduced hereinabove, was a passing remark and the court was not considering whether the disqualification referred to in section 12 (a) of the Probation of Offenders Act was the disqualification incurred on account of loss of service. The said judgment can not be said to be an authority on the point. However, in the latter judgments referred to hereinabove, the point was directly at issue and has been answered as aforesaid . In view of these latter judgments, there is no possibility of holding that inspite of his conviction, the petitioner could not have been punished departmentally. Mr Vakil has also relied upon the judgment of the Hon'ble Supreme Court in the matter of THE DIVISIONAL PERSONNEL OFFICER SOUTHERN RAILWAY & ANR VS T.R.CHALLAPPAN (AIR 1975, SC 2216), more particularly, paragraph-21 thereof. In the present case, the petitioner has been given adequate notice and his reply too has been considered by the disciplinary authority. On the facts of the present case, the observations made in paragraph-21 of the said judgment lend no support. Mr. Vakil has further submitted that though the disciplinary action was initiated in the year 1980 by issuing a chargesheet on 29th September, 1980, the same was not proceeded further. It must, therefore, be presumed that the respondent had taken a conscious decision not to proceed against the petitioner departmentally and the petitioner should be deemed to have been exonerated. The contention, ex-facie, is unsustainable and is rejected.

No other contention is raised before me.

In view of the above discussion, the petition is dismissed. Rule is discharged. The parties shall bear their own costs.

(MS R.M.DOSHIT J)

JOSHI